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Attorneys for Defendant,  
MIRA MESA MARKETPLACE WEST, LLC

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

OUTERBRIDGE ACCESS	)	Case No.: 08 CV 0046 JM JMA
ASSOCIATION, SUING ON BEHALF	)	
OF DIANE CROSS; and DIANE CROSS,	)	<b>NOTICE OF MOTION AND</b>
An Individual,	)	<b>MOTION TO DISMISS BY</b>
	)	<b>DEFENDANT MIRA MESA</b>
	)	<b>MARKETPLACE WEST, LLC.</b>
Plaintiffs,	)	
	)	[FRCP §§ 12(b)(1); 28 U.S.C. 1367(c)]
vs.	)	
	)	Complaint Filed: January 8, 2008
	)	
HOME DEPOT U.S.A., INC. d.b.a. THE	)	Judge: Hon. Jeffery Miller
HOME DEPOT #6679; MIRA MESA	)	
MARKETPLACE WEST, LLC; AND	)	Courtroom: 16
DOES 1 THROUGH 10, Inclusive,	)	
	)	Date: March 21, 2008
Defendants.	)	
	)	Time: 1:30 pm.
	)	
	)	<b>NO ORAL ARGUMENT UNLESS</b>
	)	<b>REQUESTED BY COURT</b>
	)	

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 21, 2008 in Courtroom 16 of the above entitled court, located at 940 Front Street, San Diego, California, Defendant MIRA MESA MARKETPLACE WEST, LLC., (hereinafter referred to as "Defendant") responds to the Complaint of Plaintiffs OUTERBRIDGE ACCESS ASSOCIATION, Suing on Behalf of DIANE CROSS, (hereinafter referred to as "Plaintiffs") by moving under Federal Rules of Civil

1 Procedure §12(b)(1) for the Court to dismiss all state law causes of action of Plaintiffs' complaint  
2 for all of the reasons set forth in 28 USC §1367(c), especially in light of the conflict in California  
3 state law surrounding the California Unruh Act and Civil Code §52(a) after decision rendered in  
4 *Gunther v. Lin* 144 Cal. App. 4th 223 (2006).

5 This Motion is based on this Notice of Motion, the Memorandum of Points and  
6 Authorities in Support thereof, Defendant's Request of Judicial Notice, the Court's file  
7 and on all other matters presented by counsel.

8 Dated: February 12, 2008

MILBERG & DE PHILLIPS

9  
10 /s/ Timothy G McNulty

By:

11 Timothy G. McNulty  
12 Attorneys for Defendant, MIRA MESA  
13 MARKETPLACE WEST, LLC  
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